

**United States Department of Labor
Employees' Compensation Appeals Board**

H.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 14-1550
Issued: January 5, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 30, 2014 appellant filed a timely appeal from a June 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for the period July 4 and 5, 2013.

FACTUAL HISTORY

On July 11, 2011 appellant, then a 56-year-old mail handler, filed an occupational disease claim alleging that his work duties, including loading and unloading trucks, and lifting heavy

¹ 5 U.S.C. § 8101 *et seq.*

sacks, and tubs full of mail, caused severe degenerative arthritis of the hips. He stopped work on March 26 and returned on May 23, 2011.

In a July 6, 2011 report, Dr. Edward J. Boyko, a Board-certified internist, noted providing care for appellant since October 22, 2003. He opined that appellant had severe degenerative arthritis of both hips as confirmed by x-rays taken on January 29, 2011 and of the pelvis on March 29, 2011. Dr. Boyko indicated that appellant underwent a total right hip replacement on March 29, 2011. He advised that the plan was to replace appellant's left hip in 2012 to provide him with adequate time to recover from the first operation. Dr. Boyko opined that appellant's condition was "likely aggravated or caused by his employment for the [employing establishment] which he joined as a regular employee on May 29, 2004. This employment involved activities that included: heavy lifting in the process of unloading, and loading trucks, and trailers, and lifting sacks of mail weighing up to 70 [pounds] and mail tubs weighing up to 30 [pounds] repetitively. [Appellant's] work also required that he be on his feet constantly. As the type of arthritis he has developed is due to wear and tear, I believe that these employment activities aggravated or caused his hip arthritis."

OWCP accepted the claim for aggravated arthritis/osteoarthritis of the bilateral hips/thighs.²

On July 9, 2013 appellant filed a Form CA-7, requesting payment for wage-loss compensation due to time missed from work for the period July 4 through 6, 2013. The employing establishment verified that the claimant incurred 16 hours of leave without pay from July 4 to 5, 2013. It noted that appellant did not provide medical evidence to support the temporary total disability.

By letter dated July 15, 2013, OWCP advised appellant of the evidence needed to support the claim for wage-loss compensation. It requested that he provide a physician's narrative report with a reasoned medical opinion explaining how the disability was caused or aggravated by the claimed injury.

OWCP received a February 8, 2013 duty status report from Dr. Boyko, who indicated that appellant had hip pain and limited mobility. Dr. Boyko diagnosed aggravated osteoarthritis of the hips left and right. He checked the box "yes" in response to whether the condition was due to the injury. Dr. Boyko advised that appellant could return to work on February 8, 2013 and prescribed restrictions.

By decision dated September 9, 2013, OWCP denied appellant's claim for wage-loss compensation on July 4 and 5, 2013 as the medical evidence of record was insufficient. It found that there was no reasoned medical opinion of record from a qualified physician, explaining why

² The record does not indicate that OWCP authorized appellant's hip surgery or that it paid any wage-loss compensation.

appellant was unable to work during the claimed period, and how his disability from work during the claimed period was the result of the accepted work injury.³

On September 10, 2013 appellant requested a hearing, which was held March 28, 2014. During the hearing, he indicated that he had been disabled from work on numerous dates due to the effects of his accepted conditions. However, appellant was using his sick leave to cover his absences from work. He noted that he had four accepted claims, for numerous medical conditions, including injuries to the shoulders, hips, wrists, and knee. Regarding the dates of July 4 and 5, 2013, appellant indicated that his arthritis in his hips flared up, and from time to time, he had difficulty walking. He noted that he had obtained a letter from his physician and would provide the documentation following the hearing.

In a September 25, 2013 report, Dr. Boyko noted his history of treating appellant, advising that appellant had numerous conditions that caused him pain and disability. He advised that appellant had severe degenerative arthritis of both hips confirmed on x-ray. Dr. Boyko noted that appellant underwent total right hip replacement on March 29, 2011. He indicated that appellant would eventually need left hip replacement, as well, due to severe osteoarthritis. Dr. Boyko also indicated that appellant had severe degenerative arthritis of the left glenohumeral joint and might need a left shoulder joint replacement. He noted that appellant's medical problems were more intense on some days than on others. Dr. Boyko stated that on July 4 and 5, 2013 appellant was experiencing severe discomfort from his degenerative arthritis of his hips, and shoulder that rendered him unable to work. He explained that his opinion was based upon an interview, and examination of appellant and reviews of recent x-rays. Dr. Boyko explained that appellant's conditions were chronic and would result in progressive disability over time.

Dr. Boyko indicated that appellant also had left median neuropathy at the wrist (carpal tunnel syndrome) as confirmed by electrodiagnostic study, and might need future surgery for this condition. He opined that "these illnesses were likely aggravated or caused" by his employment. Dr. Boyko noted that appellant's duties included: heavy lifting in the process of unloading and loading trucks, and trailers with sacks and tubs of mail on a repetitive basis. He explained that as the type of arthritis appellant developed was due to wear and tear, he believed that these employment activities caused or aggravated appellant's hip and shoulder arthritis and also contributed to his carpal tunnel syndrome or repetitive motion injury. Dr. Boyko opined that the prognosis was poor due to the degenerative nature of his arthritic condition. On February 12, 2014 he advised that appellant could work with restrictions.

By decision dated June 17, 2014, an OWCP hearing representative affirmed the September 9, 2013 decision.

LEGAL PRECEDENT

The Board notes that the term "disability," as used in FECA means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴

³ While OWCP referred to a July 6, 2013 report from Dr. Boyko, this appears to be a typographical error as the reports from Dr. Boyko are dated July 6, 2011 and February 8, 2013.

⁴ *Patricia A. Keller*, 45 ECAB 278 (1993).

For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁵ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁶ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.⁷

ANALYSIS

Appellant's claim was accepted for aggravated arthritis/osteoarthritis of the bilateral hips/thighs. He returned to regular duty on May 23, 2011, and later claimed wage-loss compensation on July 4 and 5, 2013.

Appellant argued during his hearing that he would have occasional flare ups that prevented him from working. In support of his claim for disability for the period from July 4 and 5, 2013, he provided a September 25, 2013 report from Dr. Boyko, his treating physician, who indicated that appellant had numerous conditions that caused him pain and disability, and often lead to his inability to work. Dr. Boyko advised that appellant had severe degenerative arthritis of both hips confirmed on x-ray and underwent a total right hip replacement on March 29, 2011. He noted that appellant would eventually need left hip replacement, as well, due to severe osteoarthritis. Dr. Boyko also indicated that appellant had severe degenerative arthritis of the left glenohumeral joint, confirmed on x-ray and may need a left shoulder joint replacement for this problem. He noted that appellant's medical problems were more intense on some days than on others. Dr. Boyko indicated that on July 4 and 5, 2013, appellant had severe discomfort from his degenerative arthritis of his hips and shoulder that rendered him unable to work. He explained that his opinion was based upon an interview, examination, and reviews of recent x-rays. Dr. Boyko explained that appellant's conditions were chronic and would result in progressive disability over time. He noted that his duties included heavy lifting in the process of unloading and loading trucks and trailers with sacks and tubs of mail on a repetitive basis. Dr. Boyko explained that as the type of arthritis appellant developed was due to wear and tear, he believed that these employment activities caused or aggravated his hip and shoulder arthritis and also contributed to his carpal tunnel syndrome or repetitive motion injury. He opined that the prognosis was poor due to the degenerative nature of his arthritic condition. The Board notes that Dr. Boyko suggested that appellant was unable to work on July 4 and 5, 2013 due to severe discomfort from his degenerative arthritis of the hips but based that opinion primarily on appellant's self-reporting; not on his own personal diagnosis on those days.⁸ Dr. Boyko's

⁵ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

⁷ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *supra* note 5.

⁸ *Id.*

opinion that “these illnesses were likely aggravated or caused” by his employment is not sufficiently supported by objective findings and medical reasoning. Other than to indicate that appellant reported pain and disability it does not appear that the physician examined appellant on these dates. It also appears that he may be attributing his disability to other conditions, such as a shoulder condition, other than the accepted aggravation of osteoarthritis of the bilateral hips/thighs. A physician’s opinion on causal relationship between a claimant’s disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, Dr. Boyko must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.⁹

Other reports in the record did not provide any opinion that appellant was disabled from work due to the accepted aggravated arthritis/osteoarthritis of the bilateral hips/thighs for the period in question.

Although appellant alleged that he was entitled to wage-loss compensation for the period claimed, due to his accepted employment injury, the medical evidence of record does not establish that his claimed disability during the time frame was related to his accepted condition. The Board finds that he has failed to submit rationalized medical evidence establishing that his disability on July 4 and 5, 2013 was causally related to his accepted conditions, and thus, he has not met his burden of proof.

On appeal, appellant notes his physician provided sufficient rationale to support his disability for work. However, as noted above it was insufficiently rationalized and insufficient to establish his claim. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he was entitled to wage-loss compensation for the period July 4 and 5, 2013.

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board